

REMARKS

Claims 1, 3-5, 8-10 and 16-18 are pending. Claims 1, 3-5, 8-10 and 16-18 were rejected. By virtue of this response, claim 18 has been canceled, and claim 1 has been amended. Accordingly, claims 1, 3-5, 8-10 and 16-17 are currently under consideration. For the Examiner's convenience, Applicant's remarks are presented in the same order in which they were raised in the Office Action.

Claim Amendment Support

Support for the amendments to claim 1 can be found throughout the specification, for example, at page 17, line 26 – page 18, line 8. Claim 1 has been amended without prejudice or disclaimer of any previously claimed subject matter. The amendment is made solely to promote prosecution without prejudice or disclaimer of any previously claimed subject matter. Additionally, amendment of certain claims is not to be construed as a dedication to the public of any of the subject matter of the claims as previously presented.

Claim Rejections – 35 U.S.C. § 112, First Paragraph

Claims 1, 3-5, 8-10 and 16-18 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for:

A method of reducing respiratory syncytial virus (RSV) viral load in an individual who is at risk of being exposed to RSV comprising locally administering a composition to the individual, wherein the administration takes place about 5 days before the individual is infected with RSV, wherein the composition comprises a polynucleotide, wherein the polynucleotide is SEQ ID NO: 1,

does not reasonably provide enablement for: a method of suppressing a RSV infection in an individual who is at risk of being exposed to RSV comprising locally administering a composition to the individual, wherein the composition comprises a polynucleotide that is greater

than 6 but less than 200 nucleotides in length and comprises the CpG motif, at anytime prior to RSV infection, excluding 3 days before RSV infection, to suppress the infection.

Applicant respectfully disagrees. Firstly, the Examiner has left out a few elements of the then-pending claims: (a) the polynucleotide comprises a TCG motif, not merely a CpG motif; (b) the composition excludes cytokines and RSV antigens; and (c) the composition is administered between 3 and 14 days prior to RSV exposure. Secondly, the claims as currently amended include further limitations: (d) the polynucleotide is between 6 and 50 nucleotides in length; and (e) the polynucleotide is administered in an amount sufficient to reduce RSV titer.

Accordingly, not all CpG containing polynucleotides are encompassed by the current claims. The only polynucleotides covered by the claims are those that: (a) comprise the sequence 5'-T,C,G-3'; (b) are greater than 6 and less than about 50 nucleotides in length; (c) are immunostimulatory; and (d) are administered in an amount sufficient to reduce RSV titer. When viewed in light of all the arguments presented by applicant in the previous submission (filed with the Request for Continued Examination dated October 29, 2007), which are not repeated herein for brevity's sake, the scope of the current claims are clearly enabled by the specification, which clearly teaches how to make and use this limited number of nucleotide sequences.

Therefore, Applicant submits that claim 1, 3-5, 8-10 and 16-17 are enabled in accordance with 35 U.S.C. § 112, first paragraph and request withdrawal of this ground for rejection.

Double Patenting

Claims 1, 3-5, 8-10 and 16-17 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 and 11 of copending Application No. 10/898,512. When the conflicting claims have been found to be allowable, Applicant will address this provisional double patenting rejection with a terminal disclaimer.

Claims 1, 3-5, 8-10 and 16-17 stand provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application

No. 10/426,237. When the conflicting claims have been found to be allowable, Applicant will address this provisional double patenting rejection with a terminal disclaimer.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

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Respectfully submitted,

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